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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2031

JOSEPH E. ERHART, R.C.P.
7908 Broadway Avenue
Lemon Grove, CA 91945

A C C U S A T I O N

Respiratory Care Practitioner
License No. 9120

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 16, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License No. 9120 to JOSEPH E. ERHART (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2007, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states, in pertinent part:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

" . . .

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

" . . .

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

" . . .

"(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

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1 “(k) Falsifying, or making grossly incorrect, grossly inconsistent, or
2 unintelligible entries in any patient, hospital, or other record.

3 “(l) Changing the prescription of a physician and surgeon, or falsifying
4 verbal or written orders for treatment or a diagnostic regime received, whether or
5 not that action resulted in actual patient harm.

6 “ . . . ”

7 7. Section 3750.5 of the Code states:

8 “In addition to any other grounds specified in this chapter, the board may deny,
9 suspend, or revoke the license of any applicant or license holder who has done any of the
10 following:

11 “(a) Obtained or possessed in violation of law, or except as directed by a
12 licensed physician and surgeon, dentist, or podiatrist administered to himself or
13 herself, or furnished or administered to another, any controlled substances as
14 defined in Division 10 (commencing with Section 11000) of the Health and Safety
15 Code, or any dangerous drug as defined in Article 2 (commencing with section
16 4015) of Chapter 9.

17 “(b) Used any controlled substance as defined in Division 10 (commencing
18 with Section 11000) of the Health and Safety Code, or any dangerous drug as
19 defined in Article 2 (commencing with section 4015) of Chapter 9.

20 “ . . . ”

21 “(d) Been convicted of a criminal offense involving the consumption or
22 self-administration of any of the substances described in subdivisions (a) and (b),
23 the possession of, or falsification of a record pertaining to, the substances described
24 in subdivision (a), in which event the record of the conviction is conclusive
25 evidence thereof.

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28 “(f) Falsified, or made grossly incorrect, grossly inconsistent, or

1 unintelligible entries in any hospital, patient, or other record pertaining to the
2 substances described in subdivision (a)."

3 8. Section 3752 of the Code states:

4 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
5 made to a charge of any offense which substantially relates to the qualifications, functions,
6 or duties of a respiratory care practitioner is deemed to be a conviction within the meaning
7 of this article. The board shall order the license suspended or revoked, or may decline to
8 issue a license, when the time for appeal has elapsed, or the judgment of conviction has
9 been affirmed on appeal or when an order granting probation is made suspending the
10 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
11 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
12 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment."

14 9. California Code of Regulations (CCR), title 16, section 1399.370, states:

15 "For the purposes of denial, suspension, or revocation of a license, a crime or act
16 shall be considered to be substantially related to the qualifications, functions or duties of a
17 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
18 perform the functions authorized by his or her license or in a manner inconsistent with the
19 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
20 those involving the following:

21 "(a) Violating or attempting to violate, directly or indirectly, or assisting or
22 abetting the violation of or conspiring to violate any provision or term of the Act.

23 "(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

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28 **COST RECOVERY**

10. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. . . ."

11. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

12. Section 3753.1 of the Code states, in pertinent part:

"(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation. "

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

13. Respondent is subject to disciplinary action under Code section 3750(d), 3750.5(d), 3750(g), and 3752, in that he was convicted of a crime substantially related to the qualifications, functions, or duties of a respiratory care practitioner. The circumstances are as follows:

A. On or about July 8, 2003, the San Diego Regional Pharmaceutical Narcotics Enforcement Team (RxNET) investigated a report of fraudulent prescriptions written and obtained by Respondent by using prescription forms from Dr. Bruce C. The fraudulent prescriptions were under the names of Respondent and A. Erhart (Respondent's wife). The prescriptions were for Tylenol with Codeine (a schedule III narcotic) and Tylenol IV (a schedule III narcotic).

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B. For purposes of criminal charging, RxNET focused on the

1 Respondent presenting forged prescriptions to the listed pharmacies on the
2 following dates:

3	<u>DATE</u>	<u>PRESCRIPTION</u>	<u>PHARMACY</u>
4	July 1, 2003	Tylenol with Codeine	Walmart (Santee)
5	July 2, 2003	Tylenol III	Sav-On Drugs (Santee)
6	June 19, 2003	Tylenol III	Sav-On Drugs (Santee)
7	June 16, 2003	Tylenol III (under name Ana Erhart)	Rite-Aid (Santee)
8	June 4, 2003	Tylenol III	Sav-On Drugs (Santee)
9	May 5, 2003	Tylenol III	Sav-On Drugs (Santee)
10	May 20, 2003	Tylenol III	Sav-On Drugs (Santee)

11 C. From on or about August 1, 2002 to on or about July 2,
12 2003, Respondent knowingly caused 46 fraudulent claims, totaling \$2, 172.81, to
13 be made against Healthnet Health Insurance when he used his Healthnet insurance
14 benefits to pay for some of the fraudulent prescriptions as part of an ongoing
15 scheme to forge and submit fraudulent prescriptions.

16 D. Respondent admitted to the RxNET Investigator of using
17 fraudulent prescriptions to obtain controlled substances over a two year period
18 using his name, his son's name and his wife's name; admitted to taking up to 20
19 Tylenol III and eight or nine of Tylenol IV per day; and admitted to billing his
20 health insurance (Healthnet) for some of the fraudulent prescriptions.

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28 E. On or about April 28, 2004, an Information was filed in

1 Superior Court of California, County of San Diego, East County Division, entitled
2 *The People of the State of California v. Joseph Ernest Erhart*, Case No.
3 CE239742, charging Respondent with eight counts of violating Health and Safety
4 Code section 11173(a) [Obtaining Prescription By Fraud/Deceit, a felony - Count 1
5 through Count 7] and one count of violating Penal Code section 550(a)(1)
6 [Insurance - Present False Claim - Count 8].

7 F. On or about July 12, 2004, pursuant to a plea agreement,
8 Respondent pled guilty and was convicted of Count LI0 of One (a lesser charge)
9 violating Health and Safety Code section 11162.5(a) [counterfeiting a prescription].
10 The imposition of sentence was suspended, and he was granted three years formal
11 probation with terms and conditions.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Commission of a Fraudulent or Dishonest Act)**

14 **(Falsifying Other Record)**

15 14. Respondent is further subject to disciplinary action under Code sections
16 3750(j), 3750(k), 3750.5(f), and 3750(g), in that he forged prescriptions, as more particularly
17 described in paragraph 13, above, which is incorporated by reference as if fully set forth herein.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Changing the Prescription of a Physician or Surgeon)**

20 15. Respondent is further subject to disciplinary action under Code sections
21 3750(l) and 3750(g), in that he forged prescriptions by using a prescription form belonging to Dr.
22 Bruce C., as more particularly described in paragraphs 13 and 14 above, which are incorporated
23 by reference as if fully set forth herein.

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28 **FOURTH CAUSE FOR DISCIPLINE**

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